UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/7/Add.12
24 May 1991

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

CZECH AND SLOVAK FEDERAL REPUBLIC*

[14 May 1991]

* The present report replaces the initial report submitted on 21 November 1989 and reproduced in document CAT/C/7/Add.4.

GE.91-12115/3198B

PART I. GENERAL INFORMATION

A. Introduction

1. The Czech and Slovak Federal Republic signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 8 September 1986; its instrument of ratification was deposited with the Secretary-General of the United Nations on 7 July 1988. On 21 November 1989 an initial report of Czechoslovakia was submitted; it was published in document CAT/C/7/Add.4. In view of the fundamental changes in the State and in society after November 1989, the Czechoslovak legal system is being amended with a view to bringing internal legislation much more into line with the international commitments than was the case previously. In the light of the amendments to Czechoslovak law adopted after the aforementioned report was submitted, it has been decided to withdraw the former report from consideration in the United Nations and to elaborate a new initial report reflecting the legislative, administrative and other measures taken since the beginning of 1990 in order to implement the Convention in a more consistent way. This, therefore, is the new initial report.

B. Other treaty commitments in this field

2. Torture and other cruel, inhuman or degrading treatment or punishment is considered in Czechoslovakia to be among the grossest violations of human rights and fundamental freedoms. Czechoslovakia expressed its consistent support for this principle not only by ratifying this Convention but also by meeting its obligations under the Universal Declaration of Human Rights of 10 December 1948 and under other international legal instruments in the field of human rights.

3. Czechoslovakia is also a party to the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966.

4. It is furthermore a contracting party to other multilateral treaties in this field, such as, for instance, the Geneva Conventions of 12 August 1949, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968, and the International Convention against the Taking of Hostages of 17 December 1979.

5. In addition, it is a contracting party to several dozen bilateral treaties on legal assistance in criminal matters, including extradition treaties. In concluding these treaties, Czechoslovakia has always espoused the general principles of international penal law.

C. General legal framework

6. The Czechoslovak legal system unequivocally prohibits torture or other similar treatment or punishment, all of which are considered criminal offences, and at the same time provides legal guarantees of the observance of this principle and sanctions for its violation.

7. The fundamental legal regulation providing protection against acts which the Convention aims to suppress is the Charter of Fundamental Rights and Freedoms declared by a Constitutional Act on 9 January 1991. It constitutes

a cornerstone of the new Constitution of the Czech and Slovak Federal Republic that is being drafted at present. Its article 7 states:

"(1) Inviolability of the person and of privacy is guaranteed. It can be limited only in cases specified by law.

"(2) Nobody may be subjected to torture or to inhuman or degrading treatment or punishment."

8. The relevant legal institutions are embodied not only in the Constitution and in penal law but also in other generally binding legal regulations. These are, for instance, the Act on the Right to Petition, the Act on the National Security Corps, the Act on the Execution of Prison Sentences, the Act on Periodical, Press and Mass Communication Media.

9. The most serious attacks against the integrity of a person, his/her dignity and freedom of decision are viewed as criminal offences and as such they are punishable. The penal code (Act No. 140/1961, Collection of Laws, as amended by subsequent regulations) thus represents the basic document of protection against all forms of violence, as described under the term of "torture" in article 1 and article 16 of the Convention. The legal protection of the inviolability of a person permeates the entire penal code since it is linked with the equality of all citizens, with their protection against generally dangerous acts relating to the exercise of the jurisdiction of State bodies and public officials. Substantial amendments have been made to the penal code, as well as to the code of penal procedure, since the first initial report of Czechoslovakia was submitted.

10. The code of penal procedure (Act No. 141/1961, Collection of Laws, as amended by subsequent regulations) provides in its section 2, paragraph 4, that the organs active in criminal proceedings shall act ex officio; they shall deal with criminal cases as expeditiously as possible and in doing so they shall fully respect the civil rights guaranteed by the Constitution. Section 52 provides for the manner in which all procedural acts in criminal proceedings will be performed, that is including acts performed prior to starting criminal prosecution. Section 52 reads:

"When performing procedural acts in penal proceedings, the persons involved in the act shall be treated in accordance with the importance and educational purpose of criminal proceedings; their dignity and their constitutional rights shall be respected at all times."

Section 91, paragraph 1, provides for the interrogation of the accused. The text of this provision states:

"The accused shall in no way be forced to make a statement or to confess, and in the course of the interrogation his dignity shall be respected."

11. The inviolability of a person is also protected by the civil law. Section 11 of the civil code (Act No. 40/1964, Collection of Laws) provides explicitly:

"A citizen has the right to the protection of his person, notably his life and health, civic honour, as well as his name and expressions of a personal nature."

Section 13 of Act No. 40/1964, Collection of Laws, as amended by Act No. 87/1990, Collection of Laws, whereby the civil code has been amended and supplemented now reads:

> "(1) In particular, a citizen has the right to insist that unjustified infringements of his right to the protection of his person be refrained from, that the consequences of such infringements be removed and that he be given appropriate satisfaction.
>
> "(2) If satisfaction provided to a citizen under paragraph 1 should appear insufficient, notably on the grounds that his dignity or his prestige in society suffered considerable damage, the citizen also has the right to pecuniary compensation for such non-material damage.
>
> "(3) The extent of compensation under paragraph 2 shall be determined by a court, with account being taken of the gravity of the damage and of the circumstances under which the infringement of the law has occurred."

12. The regulations providing for the activities of the security organs, prosecution and courts and the code of penal procedure, contain not only an explicit prohibition of torture and other similar acts listed in article 16 of the Convention, but also a more general prohibition of use of coercion in the interrogation of the accused (notably the above-mentioned section 91, para. 1, of the code of penal procedure). The execution of a penalty must in no way humiliate human dignity (section 23, para. 2, of the penal code).

13. The amended Act on the Execution of Prison Sentences (No. 179/1990, Collection of Laws) says in its article 1, paragraph 2, that in the course of the execution of prison sentences the natural dignity of the human body shall be respected and that it is not permitted to use any methods of treatment or punishment that would be cruel or that would humiliate human dignity. In addition, the provision of section 10, paragraph 1, of the Act says that during the execution of prison sentences no civil rights of the prisoners may be restricted except those whose exercise would be in contravention of the purpose of the execution of the sentence (section 1) or which cannot be exercised because of the execution of the sentence.

14. With regard to the witness ("a third person" in the sense of art. 1 of the Convention), the provision of section 52 of the code of penal procedure stipulates that in the performance of procedural acts in criminal proceedings it is always necessary to respect the dignity and the constitutional rights of the persons involved in the act.

15. With respect to provisions for the punishment of the acts defined in article 1 of the Convention, the Czechoslovak legal system has so far proceeded on the basis of the attitude that, in practical terms, the current penal law covers all acts; there is therefore no need to define the specific offence of torture in Czechoslovak penal law (cf. below under part II, art. 4). The Czechoslovak legal system provides protection against any form of violence and coercion, which includes acts that could not be considered torture or any other unlawful treatment within the meaning of the provisions of the Convention. The protection it provides is therefore broader than that required by the Convention.

D. Relationship to the Czechoslovak legal system

16. The Convention itself calls on the States parties to take internal legal measures corresponding to its requirements. Paragraph 1 of article 2 stipulates that it is the duty of each State party to take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction. This provision stipulates unequivocally the obligation to secure, through internal legislation, the protection of the relations mentioned in the Convention, be it through newly adopted or already existing measures.

17. The provisions of the Convention are incorporated into Czechoslovak legislation through section 2 of the Constitutional Act of 9 January 1991 which introduces the Charter of Fundamental Rights and Freedoms and, consequently, are directly applicable in the internal legal system. Section 2 of the aforementioned Act reads:

> "International treaties on human rights and fundamental freedoms ratified and promulgated by the Czech and Slovak Federal Republic are universally binding in its territory and supersede its own laws."

Naturally, the responsibility for the incorporation of the obligations stipulated by the Convention into Czechoslovak legal regulations lies with the State.

E. Competent organs

18. Jurisdiction in the matters regulated by the Convention is exercised by police organs, organs of State administration, civil and military courts, and the prosecutor's office. As regards the codification of the matters embodied in the Convention, the competent body is the Federal Assembly. Persons mentioned in article 1 of the Convention, notably public officials, must, in exercising their jurisdiction, strictly observe the Czechoslovak legal regulations governing the manner of the exercise of that jurisdiction as well as the conditions under which the different actions can be taken. The honour, reputation and dignity of citizens, guaranteed by the Constitution, must be respected in all cases. Failure to respect these provisions is qualified under Czechoslovak law as abuse of the authority of a public official under section 158 of the penal code which says:

> "Any public official who, acting with the intent to cause damage to another person or to obtain unauthorized benefit for himself or for another person (a) exercises his authority in a manner contrary to the law, or (b) exceeds his authority, or (c) fails to fulfil an obligation stemming from his competence, shall be punished by imprisonment for a term of six months to three years or by prohibition of the activity in connection with which he committed such criminal offence."

19. Act No. 40/1974, Collection of Laws, on the National Security Corps (NSC) stipulates the basic tasks of the NSC and determines the only means of enforcement which may be used by the State in meeting the tasks set forth in the law. Section 3, paragraph 2, provides:

"The National Security Corps and its members may intervene into the rights and freedoms of citizens if it is required for the protection of the social and State system, of public order, security of persons or property, and they may do so only within the confines of the law and to the extent that is in proportion to the protected interest."

In section 15, paragraph 1, it says:

"In performing their duties, as well as in all other service activities, members of the National Security Corps are duty-bound to respect the honour, reputation and dignity of the citizens."

20. In this context, it should be pointed out that the Act on the National Security Corps is soon to be repealed and replaced by acts of the National Councils of the Czech and the Slovak Federal Republic and of the Federal Assembly on the police; these should be more in line with the international standards applying to this field.

21. Similarly, within the meaning of article 12 of the Convention, measures aimed at preventing proscribed acts can also be found in Act No. 100/1970, Collection of Laws, on the Service Employment of Members of the National Security Corps, as later amended and supplemented. Section 23 of this Act imposes on members of the NSC the duty to fulfil consistently and precisely the tasks connected with the authority and public role of the NSC as laid down in the law, in other regulations, and in the orders and instructions of their superiors. In keeping with article 2, paragraph 3 of the Convention, it is also the duty of the National Security Corps member to refuse to obey an order or instruction from a superior, if obeying it would mean committing a criminal offence.

F. Legal remedies

22. The protection of the rights of citizens is secured, above all, by the courts and the administrative organs. Every person, regardless of whether he or she is a Czechoslovak citizen, has the right to invoke that protection. In criminal proceedings, the said organs have the duty to inform the participants about their rights and duties. Furthermore, the protection of citizens' rights is subject to the prosecutor's supervision. This makes it possible not only to monitor observance of the law by the security, administrative and other organs acting in criminal proceedings, but at the same time, prevents unlawful acts on their part. In all likelihood, the scope of remedies available to the population of Czechoslovakia will be broadened after the establishment of an administrative judiciary, which is envisaged.

23. The protection of the individual's right to seek redress is provided for in article 18, paragraph 1, of the Charter of Fundamental Rights and Freedoms which reads:

"The right of petition is guaranteed; everybody has the right to address, himself or herself, or jointly with other individuals, to organs of the State or of local self-government with requests, proposals and complaints in matters of public or other common interest."

24. A person who is of the opinion that he or she has been subjected to torture or other similar treatment is entitled to file charges under section 158 of the code of penal procedure, according to which it is the duty of the prosecutor, the investigator and the investigating organs to receive reports on criminal offences and to process them. They must also take all necessary measures to detect criminal offences and to find their perpetrator, and to take the necessary measures for the prevention of crimes. The prosecutor or the investigating organs verify reports of criminal offences by obtaining the relevant information and explanations, and investigate and take evidence concerning the alleged offence. If the established facts attest to a criminal offence having been committed, criminal prosecution is initiated without delay. This rule is laid down in specific terms in section 12 of Act No. 60/1965, Collection of Laws, on Offices of Prosecution.

25. If, through unlawful action of public officials or other official persons, detriment has been caused to a person, the injured party is entitled to compensation for the damage caused due to incorrect official action and/or to an unlawful decision. The claim for damages is addressed directly to the State (Act No. 58/1969, Collection of Laws, on Responsibility of State for Damage Caused by a Decision of a State Body or by its Incorrect Official Action).

26. Further provisions on compensation are contained in Act No. 119/1990, Collection of Laws, on Judicial Rehabilitation; under this Act compensation is provided, inter alia, in those cases where incorrect decisions have been taken as a result of acts defined in the Convention. Section 14, paragraph 1 (b), of the Act says:

> "When a court finds in review proceedings that the decision under review is faulty, notably in those cases when flagrant violations of the procedural regulations were committed in the former proceedings, especially when force or other means were used to extort a confession out of a person, it revokes the decision as a whole or that part thereof which is faulty."

G. Conclusions

27. Violations of the Convention occur most often in areas where legal measures restricting the exercise of human rights apply, notably in correctional institutions and military establishments, but also in health facilities, particularly psychiatric hospitals. There have been cases of physical force being used by some public officials, especially on persons suspected and/or accused of having committed a criminal offence. Such public officials are prosecuted for the respective criminal offences under the penal code (see above), with account being taken of the degree to which their act is dangerous to the society. Equally responsible, in keeping with article 4 of the Convention, is an accomplice and a participant in the criminal offence committed or attempted.

28. The relevant official statistics indicate that in the period from 1 January 1988 to 31 December 1989, a total of 24 cases of ill-treatment of persons sentenced to prison terms have been ascertained. Proceedings have been conducted against 33 of 45 investigated persons. There have been two cases of serious injury to health and one case of death. The persons who ill-treated somebody while serving as prison officer have been prosecuted

for the criminal offence of abusing the authority of a public official (section 158, para. 1 (a) of the penal code) and for the criminal offence of causing injury to health. Four sentences to terms in prison have been passed for these acts, several other prison sentences have been suspended and pecuniary penalties have been imposed; three members of the police have been released from service.

29. It can now be stated that acts viewed by the Convention as torture or other similar treatment were committed in the territory of Czechoslovakia in the past to a much greater extent than the public was aware of. Many facts are now becoming known especially as regards the treatment of inmates in correctional institutions. Serious criminal offences, amounting to breach of the country's obligations under the Convention, were also committed before 1990 in the course of interventions of organs of the NSC, notably against peaceful rallies of citizens, and in the treatment of participants in such rallies who were detained.

PART II. INFORMATION RELATING TO THE INDIVIDUAL ARTICLES OF PART I OF THE CONVENTION

30. The following information relates to the manner in which Czechoslovak legislation secures the implementation of articles 2 to 16 of the Convention.

Article 2

Paragraph 1

31. As it has already been stated in paragraphs 6 to 15 and 18 to 26 of this report, there are in Czechoslovak legislation a number of effective regulations which constitute a guarantee that the incidence of cases of torture is relatively rare in Czechoslovakia and which provide a protective mechanism against such acts. The strengthening of respect for the law on the part of law enforcement authorities, namely, among other things, the prevention of acts defined in article 1 of the Convention, is the aim of the measures taken in connection with the overall democratization of society.

Paragraph 2

32. The Czechoslovak legal system does not permit any exceptions to the prohibition of the use of torture and other similar treatment or punishment. This prohibition is absolute and unconditional in the whole territory and under any circumstances.

Paragraph 3

33. The principle that an order by a superior can in no way justify torture and thus free the offender of criminal responsibility is expressly formulated in section 23, paragraph 3, of Act No. 100/1970, Collection of Laws (see para. 19 of this report). Under this provision it is the duty of a police officer to refuse to obey an order or an instruction, if he believes that by obeying he would commit a criminal offence. Both theory and practice hold that an order which is apparently a criminal one (and torture is considered to be such an order) does not exclude penal responsibility of a subordinate, who is obligated to disobey such an order. The same section stipulates that police officers, including chiefs or commanders, are duty-bound to fulfil

consistently and precisely the tasks resulting from the authority and the social role of the National Security Corps as laid down in laws and other legal regulations.

34. Under section 15 of Act No. 40/1974, Collection of Laws, on the National Security Corps, members of the NSC are obliged in their activities to respect the honour, reputation and dignity of citizens, to seek to ensure that they are not harmed, and to inform them of their rights, including the possibility of lodging a complaint. The authority of the NSC is specified in the Act on the National Security Corps in a manner which excludes an interpretation that would be contrary to the Convention. The rights and duties of NSC organs prosecuting criminal offences are set forth in the code of penal procedure in a manner which eliminates the possibility of acting in criminal proceedings in a manner that would be contrary to paragr ph 3. This holds true particularly for the provisions regulating the procedural independence of the organs active in criminal proceedings.

Article 3

35. Section 379, paragraph 1, of the code of penal procedure says:

> "1. The prosecutor to whom the Ministry of Justice or the Prosecutor General has referred the application of a foreign State for extradition, or who has learned of a crime for which a foreign State may ask for the extradition of the offender, shall hold a preliminary investigation. The purpose of the preliminary investigation shall be to determine whether there exist conditions for the extradition, in particular whether the crime involved is punishable under the law of both States and constitutes an extradition crime, whether its punishability has not become statute-barred, and whether or not the offender is a Czechoslovak citizen.
>
> "2. In extradition proceedings the person whose extradition is being considered shall have a legal adviser.
>
> "3. The prosecutor shall hear such person and advise him of the contents of the application of extradition. If such person presents facts which disprove the suspicion and in support offers evidence which may be examined without considerable delay, the preliminary investigation shall also apply to such evidence."

36. Within the decision-making process on extradition, the admissibility of extradition is also examined in light of relevant international agreements, that is also from the point of view of this Convention.

37. Upon termination of the preliminary investigation the regional court issues a ruling, based on the motion of the prosecutor, whether the extradition is admissible and submits the matter to the Ministry of Justice. The extradition requires the approval of the Minister of Justice which may be given only if the regional court and/or the Supreme Court have ruled that the extradition is admissible.

38. A provision for prohibition of explusion or return (refoulement) is laid down in section 17 of the Act on Refugees of 16 November 1990 which says:

"(1) An applicant or a refugee cannot be expelled or returned to a State where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

"(2) The provision of paragraph 1 does not apply when a refugee is posing a threat to the security of the State or has been convicted of a particularly serious criminal offence committeed intentionally. In such a case the alien concerned may be allowed to seek admission to another State."

39. As far as treaty law on extradition is concerned, there is a generally accepted principle that extradition will not be undertaken if it is contrary to the principles of the legal system or to the public order of the requested party. If both sides are bound by the Convention, this article of the Convention will also be applied in their mutual relations.

Article 4

40. The specific wording of the Convention has not been explicitly transformed into Czechoslovak law as current penal law sufficiently meets its requirements. Furthermore, the provisions of the Convention themselves are projected into Czechoslovak legislation (see para. 17 of this report).

41. Acts described in article 1 of the Convention may be covered by the definition of criminal offence given in section 158 of the penal code (abuse of the authority of a public official), and perhaps also by the definitions of criminal offences under section 196, paragraph 2, of the penal code (violence against a group of residents and against individuals), sections 221 and 222 of the penal code (injury to health), section 219 of the penal code (murder), section 231 of the penal code (restriction of personl liberty), section 235 of the penal code (extortion), as well as some others. Under Czechoslovak penal law an attempt to commit a criminal offence, complicity or participation in a criminal offence are subject to punishment equal to that for the criminal offence itself. Section B, paragraph 2, of the penal code states:

"The attempt to commit a crime shall be punishable by the penalty provided for the committed crime."

Section 9, paragraph 2, of the penal code states:

"If a crime was committed by the joint action of two or more persons, every one of them shall be criminally liable as if he alone had committed the crime (accomplices)."

Section 10, paragraph 2, of the penal code states:

"The penal responsibility and punishability of a participant in a criminal offence shall be governed by the provisions governing the penal responsibility and punishability of the offender, unless the present Code provides otherwise."

Article 5

42. Compared with the situation prevailing at the time when the original report was submitted, Czechoslovak criminal jurisdiction has been extended in accordanced with the requirements laid down by the Convention.

43. The provision contained in paragraph 1 (a) finds its expression in the Czechoslovak legal system in section 17, paragraph 3, of the penal code, which extends the applicability of the code to criminal offences committed on board a Czechoslovak vessel or a Czechoslovak aircraft outside the territory of the Czechoslovak State:

> "Czechoslovak law shall be applied to determine the punishability of an act committed on board a Czechoslovak vessel or a Czechoslovak aircraft outside the territory of the Republic ..."

44. The provision contained in paragraph 1 (b) is reflected in section 18 of the penal code:

> "Czechoslovak law shall be applied to determine the punishability of an act committed abroad by a Czechoslovak citizen or Stateless resident of the Republic."

45. The provision contained in paragraph 1 (c) has found its expression in section 20 (a) of the amended penal code:

> "Czechoslovak law shall also be applied to determine the punishability of an act when this is provided by a promulgated international treaty by which the Czech and Slovak Federal Republic is bound."

46. Czechoslovak legislation covers paragraph 2 of this article first of all by the provision contained in article 20, paragraph 1, of the penal code:

> "Czechoslovak law shall also be applied to determine the punishability of an act committed abroad by an alien or a Stateless person who is not a resident of the Republic, if:
>
> "(a) the act is also punishable under the law in force in the territory where it was committed, and
>
> "(b) the offender is apprehended on the territory of the Republic and is not extradited to a foreign State for penal prosecution."

Article 6

47. In this article, the Convention proceeds from the principle of aut dedere aut judicare which is established in the Czechoslovak legal system. The State takes a person suspected of having committed torture into custody even if that person will not be prosecuted in Czechoslovakia but will be extradited for prosecution in another State.

48. In accordance with the principle of aut dedere aut judicare reference can also be made to section 381 of the code of penal procedure which relates to so-called extradition custody to which section 67 of the code of penal

procedure does not apply. This provision makes it possible to take into custody a suspect whose extradition may be requested by another State even before the application for extradition has been submitted:

> "1. If the extradition is found admissible, the Regional Court shall take the person whose extradition is being considered into custody. In so doing the court shall not be bound by the grounds for a custody as specified in section 67.
>
> "2. The prosecutor conducting the preliminary investigation may take the person whose extradition is being considered into custody only if it is necessary for preventing the escape of such person.
>
> "3. If extradition is found not to be admissible, or if the Minister of Justice so orders, arrangements shall immediately be made for the person's release from custody."

49. The investigation to ascertain the fact whether the said persons have committed the criminal offence stated in article 4 of the Convention is governed, first of all, by section 160 of the code of penal procedure, under which the investigator is obliged to initiate criminal proceedings without delay if the established facts indicate that a criminal offence has been committed. During the investigation the investigator is duty-bound to proceed in such a manner as to clarify as speedily and as completely as possible all the facts needed for the consideration of the case. Thus the code of penal procedure provides adequate guarantees for the implementation of paragraph 2. In addition, the entire proceedings are supervised by a prosecutor who is entitled, inter alia, to issue binding instructions to the investigators, to request information from them, to take part in the investigation, and even to carry out individual acts of investigation.

50. In the criminal prosecution of foreign nationals account is taken throughout the proceedings of the provisions of relevant bilateral consular conventions or the Vienna Convention on Consular Relations. Article 36 of that Convention, covering communications and contacts of consular officials of the sending State with its nationals, has been incorporated into Czechoslovak legislation (para. 3).

51. To ensure information from the other contracting parties (para. 4) is merely a matter of organizational measures. Similar provisions are set forth in bilateral consular agreement between Czechoslovakia and other States and in the instructions of the Czechoslovak Ministries of Justice.

Article 7

52. The provision contained in paragraph 1 corresponds in the Czechoslovak legal system with section 2, paragraph 3, of the code of penal procedure:

> "The prosecutor is duty-bound to prosecute all criminal offences of which he has learned; exceptions are admissible only under the law or under a promulgated international treaty."

Section 2, paragraph 3, of the code of penal procedure states that exceptions are admissible only under the law; these exceptions concern, in particular, persons enjoying privileges and immunities. According to section 11, paragraph 1, of the code of penal procedure, as amended, penal prosecution is not admissible in certain other cases, i.e.:

(a) If it is so ordered by the President of the Republic in pursuing his right to grant pardon or amnesty;

(b) If the crime has been invalidated by prescription;

(c) If it involves a person who is exempt from the jurisdiction of the organs acting in criminal proceedings, or a person who may be prosecuted only with special authorization under the law, and such authorization has not been issued by the respective organ;

(d) If it involves a person who is not penally responsible because he is under age;

(e) Against a person who has died;

(f) Against a person whose previous prosecution for the same act ended in a judgement issued by a court or was definitely closed, provided that such decision has not been voided in the prescribed proceedings;

(g) Against a person whose previous prosecution for the same act ended in a final decision of a local court, provided that such decision has not been voided in the prescribed proceedings, or;

(h) If the prosecution is conditional upon the consent of the injured party and such consent has not been given or has been revoked; or

(i) If it is so provided by a promulgated international treaty by which Czechoslovakia is bound.

53. The provision contained in paragraph 2 corresponds with section 2, paragraph 1, of the code of penal procedure:

> "No person may be prosecuted as an accused on any grounds other than those defined by the law or in any manner other than that prescribed by this Code."

54. In connection with the provision contained in paragraph 3 reference is made to the position stated in paragraphs 7 to 15 of this report.

Articles 8 and 9

55. Nothing in the internal legislation prevents the implementation of the obligations resulting from these articles. For this purpose Czechoslovakia has concluded treaties on extradition or on legal assistance in criminal matters with a total of 42 States. Furthermore, Czechoslovakia does not make extraditions conditional upon the existence of such a treaty and it is also willing to extradite persons on the basis of reciprocity.

Article 10

56. The fulfilment of the obligations following from paragraph 1 falls under the jurisdiction of police authorities and those responsible for corrective education and prosecution. These principles have already been mentioned in paragraphs 18 to 21. Officials of the military section of the Czechoslovak prosecution authorities and military courts as well as commanders of the armed forces receive adequate education on this subject during their studies at civil and/or military schools and their superiors seek to advance their knowledge on a continuous basis afterwards.

57. The code of penal procedure and other regulations covering the role and activities of these bodies deal not only with torture: they also provide that the person and human dignity of the accused and of the sentenced person or other persons involved in criminal proceedings should be respected as well (section 52 of the code of penal procedure).

58. The unlawfulness of torture or other similar treatment or punishment follows also from other universally binding regulations. Consistent compliance with these regulations during the fulfilment of service tasks is among the basic duties of members of the National Security Corps. This duty is set out specifically in section 23 of Act No. 100/1970, Collection of Laws (see para. 21 of the report) and further in Act No. 40/1974, Collection of Laws (see para. 19).

Article 11

59. Compliance with the commitments laid down in this article is secured through the controlling and supervising activities of the Ministries of Interior and through the supervising system existing within the National Security Corps. Members of the National Security Corps, in carrying out their activities, are required to adhere strictly to legality, to prevent curtailment of personal freedoms and to ensure the inviolability of a person as provided by the law. The implementation of the tasks relating thereto is a part of the curricula at all levels of the professional educational system. In their professional training, regular instruction on the relevant regulations is given particularly to those members of the NSC who have contacts with the public in connection with criminal or other antisocial activities perpetrated by citizens. An emphasis on upholding lawfulness in connection with the limitation of the constitutional right to personal inviolability is also found in the internal service acts which regulate in detail the individual fields of service activities.

Article 12

60. Czechoslovak criminal proceedings are based, inter alia, on respect for the legal and official nature of those proceedings. The principle of legality is set forth in section 2, paragraph 3, of the code of penal procedure, while section 2, paragraph 4, states:

"Unless the present Code provides otherwise, the organs acting in criminal proceedings* shall act ex officio; they shall deal with criminal cases as expeditiously as possible and in doing so shall fully respect the civic rights guaranteed by the Constitution."

Further, paragraph 5 of the same section states:

"The organs active in criminal proceedings shall act so as to ascertain the true state of the case on which they shall base their decisions. They shall clarify with the same attention the circumstances speaking against the accused and circumstances favouring him, and shall examine evidence in both respects without waiting for the parties so to move. Admission of guilt by the accused shall not relieve the organs active in criminal proceedings of their duty to review and ascertain by all available means all the circumstances of the case."

61. In this connection, the obligation of the organs active in criminal proceedings to accept reports on criminal offences under section 158 of the code of penal procedure is also applicable to the full extent to criminal offences consisting of acts described in article 1 and/or article 16 of the Convention.

Article 13

62. The implementation of this article is ensured, in particular, by the following regulations:

(a) Article 18, paragraph 1 of the Charter of Fundamental Rights and Freedoms (see para. 23 of this report);

(b) Act No. 85/1990, Collection of Laws, on the right to petition regulating the right of every person.

"... to address, himself or jointly with other individuals, to State organs requests, suggestions or complaints in matters of public or other common interest that fall within the jurisdiction of these organs" (section 1, para. 1).

Section 2 of the Act states that "no person may be hindered in the exercise of his right to petition. No person may suffer detriment because of having exercised this right.";

(c) The code of penal procedure where:

---

* Author's note: that is, as a rule, investigators of the military or civilian prosecution.

(i) Section 158, paragraph 1, reads:

"The prosecutor, the investigator and the investigating organ are obliged to accept reports on facts indicating that a criminal offence has been committed and to process them as expeditiously as possible; in doing so they are obliged to instruct the reporting person of his responsibility for deliberately false information and to inform him within a month at the latest of the measures taken."

This provision applies also to the deeds falling under the definition of torture under articles 1 and 16 of the Convention;

(ii) Section 159, paragraph 4, (a new amendment) states that

"the dismissal of the case shall always be notified to the reporting person and to the injured party who may lodge a complaint against it";

(iii) Section 167 provides for the right of the accused to ask the prosecutor to re-examine the procedures followed by the investigator or the investigating organ:

"The accused and the aggrieved have the right, at any time in the course of the investigation, to request the prosecutor to put an end to delays in the investigation and defects in the procedure followed by the investigator. The request is not tied to any deadline. Such request must be submitted to the prosecutor immediately and he must process it without delay. The person who has submitted the request must be informed of the result of the re-examination";

(iv) Section 33 which lists the rights of the accused, especially his right to submit motions to seek legal remedies, etc.

Article 14

63. As already stated in paragraphs 11 and 25 of this report, the Czechoslovak legal system provides for compensation for damage caused to victims of unlawful acts.

64. The right to just and adequate compensation within the meaning of article 14 of the Convention is provided for in Act No. 58/1969, Collection of Laws, on the Responsibility of State for Damage Caused by a Decision of a State Body or by its Incorrect Official Action. Section 18 of that Act says:

"1. The State is responsible for damage caused within the framework of the fulfilment of the tasks of State organs through improper official procedure followed by persons fulfilling these tasks;

"2. Nobody can be relieved of the responsibility under paragraph 1."

65. The provisions of Act No. 119/1990, Collection of Laws, on Judicial Rehabilitation (see para. 26 of this report) fall within this category as well.

Article 15

66. The obligation following from this article is now fully covered by the new provision of section 89, paragraph 3, of the code of penal procedure:

> "Evidence obtained through unlawful coercion or threat of such coercion shall not be used in proceedings except as evidence against the person who has applied such coercion or threat of coercion."

67. According to section 91, paragraph 1, of the code of penal procedure, the accused person has the right, but not the duty, to be called to witness.

> "The interrogation of the accused person shall be conducted so as to provide the fullest and clearest possible picture of the facts which are important for the criminal proceedings. The accused person shall in no way be forced to be called to witness or to confess, and in the course of the interrogation his dignity shall be respected. The confession of the accused person shall not relieve the organs acting in criminal proceedings of their duty to examine and verify by all accessible evidence all the facts of the case."

The said provision is furthermore enhanced by the principle of viva voca, according to which the previous interrogation of the accused person must be repeated before the court, and by the principle that the main court hearing must be open to the public. The interrogation of witnesses is conducted in a similar manner with the substantial difference that a witness is, naturally, obliged to testify, unless the law provides explicitly for the right of that witness to deny testimony or unless the law prohibits interrogation. (The latter applies to circumstances that are subject to State secret and to persons who by their deposition would violate the duty of discretion imposed on them by the State).

Article 16

68. The Czechoslovak legal system and the practice of its application are fully oriented toward protection against all other cases of cruel, inhuman or degrading treatment or punishment which do not fall under the term of torture as defined in article 1 of the Convention. The provisions applying here are similar to those stated in respect of the relevant articles on torture. In particular, the obligations resulting from the provisions contained in articles 10, 11, 12 and 13 are applied identically.

* * *

69. After November 1989 endeavours to ensure consistent compliance with the obligations following from the Convention have been rigorously pursued in the spheres of both legislation and implementing procedures, as well as in other areas. In this context, organizational and personnel measures have been taken in the competent organs and arrangements have been made to ensure greater transparency of their activities and to enhance parliamentary and public supervision over their activities. At the time when the first initial report was submitted guarantees of a political and institutional nature in these areas were insufficient.